



House Human Services Committee

Formal Request for Information – Impacts of COVID-19 on Long Term Care Facilities September 25, 2020

LeadingAge Texas represents the full continuum of mission-driven, not-for-profit aging services providers in Texas. We are committed to assisting our members in providing the highest quality of services possible to the Texans they serve. We appreciate the opportunity to provide recommendations to Chairman Frank and members of the committee on topics including; Health Care Access and Medicaid, Impacts of COVID-19 on Long Term Care Facilities, Interim Charge Four, and Interim Charge Five.

LeadingAge Texas is comprised of more than 350 members, including approximately 200 not-for-profit retirement communities, affordable senior housing, assisted living facilities, continuing care retirement communities, nursing homes, and home and community based services providers.

Impacts of COVID-19 on Long Term Care Facilities

Review the state's response to the pandemic, specifically as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. Examine the physical and mental health impacts of the visitation policy on long-term care residents.

On March 13, 2020 the Centers for Medicare and Medicaid Services (CMS) directed nursing facilities to restrict all visitor access as it worked to combat and mitigate the spread of COVID-19. Following the guidance of CMS, Governor Abbott prohibited visitation in Texas long-term care facilities.

While recognizing how difficult the prohibition on visitation would be for both residents and families, at the onset of the pandemic, providers and stakeholders agreed these measures were necessary to ensure the immediate health and safety of individuals who are at highest risk of complications from COVID-19. LeadingAge Texas supported the emergency regulation as a temporary measure in attempt to limit potential exposure and protect residents and staff.

Following months of prolonged isolation, LeadingAge Texas (LATX) was pleased by Texas Health and Human Services Commission's announcement to allow Phase One of limited visitation in nursing homes and assisted living communities. Family members and friends often play a critical role in the care of long term care residents. LATX advocated for expanded visitation for several weeks after providers observed significant declines in their residents' wellbeing (weight loss, increased acuity levels, loneliness, and declining cognition) due to prolonged isolation from their friends and family. While limiting exposure to COVID-19 is critically important, mitigation measures must be balanced against residents' mental and physical health needs – especially when creative solutions, like outdoor visitation and the use of protective equipment can address both issues.

LATX was further encouraged by the recently released CMS guidance on visitation in QSO-20-39, and the expanded visitation rules developed by HHSC effective September 24, 2020.

LATX Recommendations: As Texas policymakers continue to navigate the COVID-19 pandemic (and set policies for possible infection mitigation efforts in the future), LATX encourages consideration of the impact infection mitigation policies might have on long-term care residents' whole health, both physically and mentally. The mitigation efforts implemented by facilities including enhanced infection control measures, the use of personal protective equipment among staff and residents, cohorting practices, and routine testing are proving successful in the fight against COVID-19 in long term care facilities.

The most recent CMS QSO-20-39 on visitation may serve as a guide for policymaking moving forward on this issue. Lastly, providers, residents, family members, and other stakeholders should be included in the decision-making process related to visitation to help inform the discussion.

Finally, local and state agencies should work more collaboratively to align visitation rules as well as other orders impacting long term care facilities in response to COVID-19. Throughout the pandemic, local county and city orders have conflicted with state guidance creating confusion as providers strive for compliance.

Impacts of COVID-19 on Long-Term Care Facilities:

Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.

LeadingAge Texas' highest priority is the protection, safety and health of Texas nursing home and assisted living residents as a priority both prior to and during the pandemic. A number of emergency waivers for long term care facilities were executed by HHSC to adequately address the circumstances surrounding the COVID-19 pandemic.

In March, 2020, HHSC issued a provider letter that details suspension of certain LTCR requirements during COVID-19 outbreak. In the letter, the Health and Human Services Commission (HHSC) requested the Office of the Governor suspend certain regulatory requirements in response to the state of disaster declared in Texas and America relating to COVID-19. In accordance with section 418.016 of the Texas Government Code, the Office of the Governor granted HHSC's request to suspend these rules and statutes. HHSC put the suspensions in effect until terminated by the Office of the Governor or until the March 13, 2020, disaster declaration is lifted or expires.

LeadingAge Texas recommends certain temporary waivers be reevaluated or become permanent regulatory changes to the Texas Administrative Code (TAC). The changes we recommend include:

Certified Nurse Aides & Medicaid Aides

TAC provisions place certain time lines for CNA training and employment, testing nursing students prior to performing CNA and Medication Aide on-the-job functions. Eliminating unnecessary barriers to entering the workforce, particularly in CNA and Medication Aide positions

is important for recruiting and retaining a quality long-term care workforce. Data indicates that turnover among both CNAs and Medication Aides remains some of the highest in healthcare. The current waivers related to training and testing requirements has allowed facilities to employ CNAs after completing training and demonstrating competency in the tasks performed. NATCEPs and Medication Aide training programs may also complete classroom training online instead of in-person, and clinical/skills training in a laboratory setting. The emergency rule also temporarily allows nursing facilities to hire people to provide nurse aide services without having to complete a full certification program in their first four months of employment.

Under Governor Abbott's direction, the waivers seek to expand the eligible pool of direct care workers and assist long-term care providers who may face critical staffing shortages. "As Texas continues to respond to COVID-19, we are working to make sure our long-term care facilities have adequate staff to care for Texans residing in these facilities," said Governor Greg Abbott. "This emergency rule will increase the availability of nurse aides in the workforce and ensure residents of long-term care facilities have the care and support they need."

LATX Recommendations: Continue the suspension of rules related to training and testing, and work with the agency and stakeholders to develop a sustainable approach to addressing the CNA and medication aide shortage, particularly in rural and medically underserved areas of the state.

The Legislature should also consider policies that will allow CNAs and Medication Aides hired under the suspension to maintain employment once the disaster declaration is lifted, and create an accelerated path to full certification.